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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Z.S. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.V.,

Defendant and Appellant.

E072256

(Super.Ct.Nos. J277670 &
J277671)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B.
Marshall, Judge. Affirmed in part; reversed in part.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant D.V. (mother) appeals from an order of the juvenile court asserting juvenile dependency jurisdiction over two of her three children, J.J. and Z.S. She argues that the court's findings J.J. and Z.S. come within Welfare and Institutions Code section 300, subdivision (j), are not supported by sufficient evidence because her failure to provide necessary mental health treatment for their older sibling does not place J.J. and Z.S. at a substantial risk of harm. Respondent San Bernardino County Children and Family Services (CFS) agrees with mother. We will affirm the juvenile court's finding as to J.J. and reverse as to Z.S.

BACKGROUND

Mother has three children: R.D.,¹ J.J., and Z.S. J.J.'s father is deceased and the whereabouts of Z.S.'s father is unknown.

R.D suffers from severe mental health issues with a diagnosis of adjustment disorder with mixed disturbance or emotions and conduct, and suicidal ideation. It was R.D.'s problems and mother's failure to obtain appropriate services for him that led to assertion of jurisdiction over his younger siblings.

In 2016, when he was nine years old, R.D. attempted suicide by jumping off a second-floor balcony at school. He said mother and her boyfriend (Z.S.'s father) were abusing him and he would rather die than live with mother. The abuse was not substantiated but the department of mental health created a safety plan that required R.D. to be discharged to his father, who allowed R.D. to move back with mother.

¹ R.D. is not a subject of this appeal.

Los Angeles County Department of Children and Family Services (DCFS) began providing voluntary family maintenance services for the family in May 2017 after R.D. was hospitalized for suicidal ideation. In February 2018, when the family moved to the high desert area, DCFS asked mother to enroll R.D. in San Bernardino County mental health services and provided referrals. Mother did not follow up.

CFS became involved with the family in July 2018 after R.D. left a shopping mall play area without permission. He planned to take a bus to the Long Beach home of his paternal grandmother as he had done once before. Mother went home without him and called the police to report R.D. had run away. R.D. was found and, when a sheriff's deputy returned him home, it was discovered that R.D. was sleeping in a storage room on the second-floor balcony. Mother variously reported that R.D. was required to sleep there due to concern he would hurt his siblings at night and as punishment for running away a week earlier.

CFS inspected the home and found it appropriate for the children. After a child and family team meeting, mother decided to send R.D. to his paternal grandmother's home until she could make better arrangements for him. Mother believed R.D. belonged in juvenile hall or in a group home. In the meantime, she insisted that R.D. had to be home schooled and refused to provide the grandmother authority to enroll the child in school or to obtain mental health services or medical care for him. In late August 2018, the grandmother, apparently in R.D.'s presence, informed mother that, if mother insisted on homeschooling, R.D. would have to return to mother's care because the grandmother

was not able to home school him. R.D. took off without permission and, when found, texted mother to say he wanted to kill himself. He also expressed concern that, if he returned home, Z.S.'s father might kill him. The incident resulted in R.D.'s hospitalization for a day where he was diagnosed with adjustment disorder with mixed disturbance of emotions and conduct, and a history of suicidal tendencies.

A week later, mother informed CFS that she was going to put R.D. in foster care or a group home without the assistance of CFS. She agreed to attend an emergency child family team meeting, but then told CFS that she was not going to participate but would instead have her brother take R.D. She refused to provide contact information for her brother.

CFS was concerned for R.D.'s safety in view of his multiple hospitalizations for suicidal attempts and ideation and mother's refusal to initiate or provide consent for mental health services for him. It obtained a warrant for his detention, took him into protective custody and placed him in a foster home. A section 300 petition was filed as to R.D. that included allegations that mother failed to provide him with needed mental health services and that his father had a history of domestic violence. CFS also filed nondetained petitions on behalf of then seven-year-old J.J. and two-year-old Z.S. Those petitions alleged that, because mother failed to provide R.D. with necessary mental health services, J.J. and Z.S. were at risk of similar neglect.

In September 2018, while the hearing on jurisdiction was pending, County of San Bernardino Department of Behavioral Health (DBH) assessed J.J. and concluded his

capacity for anger control was an “immediate safety concern/priority for intervention” and required “immediate/intensive action.” He also needed help in addressing his depression, adjustment trauma, affect dysregulation and somatization. Mother declined a referral to counseling services because she believed that, although R.D. began exhibiting behavioral issues at J.J.’s age, J.J. did not need professional help. She preferred to talk with him at home and do meditation and yoga.

After the DBH assessment, CFS scheduled interviews with the Children’s Assessment Center for R.D. and J.J. Although mother initially agreed to allow J.J. to participate, she cancelled the day before. She told the social worker J.J. did not want to go, he had already been questioned several times, it was not in his best interest to be questioned again, and it was not court ordered. Mother told the social worker she had enrolled J.J. in group therapy. The worker gave her a consent form to permit CFS to obtain information from the provider. Mother indicated she would review the form and return it but had not done so by the time of the February 2019 hearing on jurisdiction and disposition.

By the time of the February hearing, the social worker reported she had no concerns about the safety of J.J. and Z.S. in mother’s home and recommended dismissal of those cases.

At the hearing, mother expressed her belief that J.J. is not at risk because he does not have mental health issues akin to those suffered by R.D., they do not share the same

father, and they are different individuals. She said J.J. cried when his father died but he did not seem angry and did not show any signs of wanting to hurt himself.

The court found R.D. came within subdivision (b) of section 300 (failure to protect) on account of his father's domestic violence history and mother's failure to provide him mental health services. It found J.J. and Z.S. came within subdivision (j) of section 300 (abuse of sibling) because mother did not obtain services for R.D. and that inaction placed J.J. and Z.S. at substantial risk of similar neglect. The court removed R.D. from parental custody but permitted mother to retain custody of J.J. and Z.S. with provision of family maintenance services. Mother noticed an appeal from the findings and orders concerning J.J. and Z.S.

DISCUSSION

Mother argues, and CFS agrees, the evidence is insufficient to support the findings that J.J. and Z.S. come within section 300, subdivision (j). Her claim is correct as to Z.S. but lacks merit as to J.J.

We review a juvenile court's jurisdictional findings for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.) Substantial evidence is that which is reasonable, credible, and of solid value. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to that court on issues of credibility of the evidence and witnesses. (*In re Madison S.* (2017) 15 Cal.App.5th 308, 318.) We determine only whether there is any substantial evidence, contradicted or

uncontradicted, that supports the juvenile court's order, resolving all conflicts in support of its determination and drawing all reasonable inferences to uphold its ruling. (*Ibid.*)

The court's order will be upheld if there is substantial evidence to support it even if other evidence supports a contrary conclusion. (*Ibid.*)

Section 300 authorizes the juvenile court to assert dependency jurisdiction over minors who come within the descriptions set forth in its subdivisions. Subdivision (j) of section 300 provides in relevant part that a child comes within the court's jurisdiction if two elements are met: the child's sibling has been abused or neglected as defined by section 300, subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (§ 300, subd. (j).) Satisfaction of the second element does not require that the risk to the child come within the same subdivision that describes the abuse or neglect of the sibling. (*In re I.J.* (2013) 56 Cal.4th 766, 774 (*I.J.*).)

The first element of section 300, subdivision (j), is not an issue in this case. The juvenile court found that the children's sibling, R.D., was abused or neglected within the meaning subdivision (b) of section 300 because mother did not provide the child with mental health services even though he had been diagnosed with serious mental health issues. Mother has not challenged that finding on appeal. She argues, however, that the second element of the subdivision was not met because the findings that J.J. and Z.S. are at risk for similar neglect lack sufficient evidentiary support. We agree that there is

insufficient evidence to support the finding Z.S. is at risk and reverse, but affirm the finding as to J.J.

In making the determination whether a child is at substantial risk, subdivision (j), unlike the other subdivisions of section 300, requires the court to consider the nature of the abuse or neglect of the sibling and the circumstances surrounding it, the gender and age of each child, the parent's mental condition, as well as any other factors the court considers probative. (§300, subd. (j).) The provision thus permits the court to consider factors that might not be determinative if the petition had been filed under another of section 300's subdivisions and accords it greater latitude to exercise jurisdiction over a child whose sibling has been neglected or abused than it would in the absence of that circumstance. (*I.J.*, *supra*, 56 Cal. 4th at p. 774.)

There is sufficient evidence to support the finding that J.J. comes within section 300, subdivision (j)

There is ample evidence to support the section 300, subdivision (j) finding that J.J. is at substantial risk of not receiving services necessary for treating his mental health issues.

At the time the juvenile dependency petition was filed, J.J. was seven years old, around the same age as R.D. when that child began demonstrating mental health problems. An assessment conducted by DBH while the hearing on jurisdiction was pending revealed J.J. was suffering from depression, adjustment trauma, affect

dysregulation, and somatization. He was sad and mad because he missed his dad (who died in April 2018 while incarcerated). He would isolate himself and cry. He rated his sadness as 8 out of 10. He reported somatic symptoms of stomachaches, shakiness, and difficulty concentrating. He had really scary dreams every night.

J.J. also had anger issues. During the assessment, he told the clinician, “[w]hen I get mad, I am mad. My anger is a 12 out of 10.” The severity and frequency of his anger was not clear. He said he got angry “sometimes,” and he would punch the walls and his bed. He quickly amended his statement to say he only punched his bed. The assessment concluded that J.J.’s anger control was a problem requiring immediate intensive action, that was an immediate safety concern and priority for intervention. It also concluded that J.J.’s depression, adjustment to trauma, affect dysregulation, and somatization were issues needing action, that a strategy was needed to address those problems.

Mother was aware that J.J. was struggling with his mental health but nevertheless resisted treatment. When she took J.J. for the assessment, she instructed the clinician not to ask about the death of J.J.’s father and was upset that she would not be permitted in the room during the interview of J.J. She believed CFS was “playing games.” She wanted it documented that she would refuse any services offered and that “[w]e are dealing with this on our own.” J.J. was referred to counseling but mother declined the services, saying she would continue to work with him at home using talking, meditation, and yoga. Mother also refused to allow JJ’s participation in an interview by the children’s assessment center that had been scheduled in October 2018. In November 2018, she told

the worker she had enrolled J.J. in group therapy but, when handed a consent form to permit CFS to obtain verification and information, she refused to sign it, saying she wanted to review it and send it in later. She had not provided the document by the time of the February 2019 hearing.

On appeal, mother argues—and CFS agrees—that J.J. was not at substantial risk of harm at the time of the February 2019 jurisdictional hearing. She posits that J.J. was not at risk because mother had enrolled him in group therapy and because a social worker who visited the family 17 days before the hearing did not identify any safety concerns and reported mother’s expression of willingness to meet with WRAP and participate in services. We are not persuaded.

While it is commendable that mother had undertaken to place J.J. in a therapeutic group, he had attended only four out of eight sessions. The provider of the therapy had not been approved by CFS and, because mother had not signed the consent form presented to her three months before the hearing, CFS had not been able to talk to the provider about J.J.’s progress. Mother’s expression of willingness to meet with a WRAP team and to engage in services is of no moment, particularly in view of her history of agreeing to participate in a program and then changing her mind. In addition, that mother may continue to be unable or unwilling to change her pattern of denying or minimizing problems and refusing services is reflected by her denial that his possible “attention challenges” and cognitive or educational delays noted by the social worker are of concern.

The evidence is insufficient to support the finding that Z.S. comes within section 300, subdivision (j)

Unlike the case of her older brother, the record does not reveal sufficient evidence to support the juvenile court's finding that two-year-old Z.S. is at substantial risk of harm on account of her mother's failure to provide R.D. with necessary mental health services. Z.S. had not been reported to have any mental, behavioral, or emotional problems and no concerns were observed in a SART assessment. Although mother did not allow a social worker to interview Z.S. alone to assess the child's cognitive ability, we do not find that fact sufficient to support the section 300, subdivision (j) finding.

DISPOSITION

The jurisdictional findings as to child J.J. are affirmed. The jurisdictional findings as to Z.S. are reversed and the order adjudicating her a dependent of the court as well as all subsequent orders are vacated as moot.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

FIELDS

J.